Supreme Court, U.S.
FILED
AUG 18 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1513

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

EDWIN W. EDWARDS, in his official capacity as Governor of Louisiana, WILLIAM W. GUSTE, JR., in his official capacity as Attorney General of Louisiana, LOUISIANA DEPARTMENT OF EDUCATION, and THOMAS G. CLAUSEN, in his official capacity as Superintendent of Education of Louisiana,

Appellants,

—v.—

DON AGUILLARD, LOUISIANA BOARD OF ELEMENTARY AND SECONDARY EDUCATION, ORLEANS PARISH SCHOOL BOARD *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE SPARTACIST LEAGUE AND PARTISAN DEFENSE COMMITTEE AS *AMICUS CURIAE* ON BEHALF OF APPELLEES

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QUESTION PRESENTED

WAS THE COURT OF APPEALS CORRECT IN FINDING THAT THE LOUISIANA "BALANCED-TREATMENT ACT" VIOLATED THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION?

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SUMMARY OF ARGUMENT

The Louisiana "Balanced-Treatment Act" violates the Establishment Clause of the First Amendment of the United States Constitution because it is in furtherance of religion in that it propagates biblical creationism in the public schools. The essential starting point is that "creation-science" is religion. There is no secular purpose to this Act.

At issue is the preservation of separation of church and state, the gains of the Enlightenment, and the education of future generations.

BRIEF OF THE SPARTACIST LEAGUE AND PARTISAN DEFENSE COMMITTEE AS AMICUS CURIAE

Pursuant to Rule 36.1 of the Rules of this Court, the organizations named above file this brief in support of the appellees. Consent for the filing of briefs amicus curiae has been granted to all interested parties by both the appellants and appellees. Letters to that effect have been filed with this Court.

INTEREST OF AMICUS CURIAE

The Spartacist League is a Marxist political organization with a history of over twenty years of activity in the United States, including running candidates for public office, holding classes and public forums on Marxist history, international and domestic politics, and publishing a bi-weekly newspaper, Workers Vanguard and a theoretical journal, Spartacist.

The Partisan Defense Committee is a class-struggle non-sectarian legal defense organization in accordance with the political views of the Spartacist League. It gives aid and support to cases and causes in the interest of the whole of the working people.

Before this Court is a challenge to a fundamental principle of the American republic and one of the most basic gains of the American Revolution of 1776--separation of church and state. The battlefield on which this is being fought is the public schools. The weapon being used is the religious dogma of biblical creation against scientific theorizing about evolution. The potential casualty is not only the separation of church and state, but the education of masses of children in the science and culture of the world.

The gains of the American bourgeois democratic revolution of 1776 and the Thirteenth, Fourteenth and Fifteenth Amendments, codifying the defeat of slavery during the Civil War, were progressive developments in the history of mankind. They are part of the outcome of a long and complicated, and in the case of the Civil War, bloody struggle during which feudal fetters on political freedom, economic freedom, religious freedom and scientific freedoms were broken or transcended.

During the Age of Enlightenment the basis was laid for the eradication of medieval superstition by scientific knowledge--for defeat over the forces of obscurantism. The current battle poses the defense of the gains of the American Revolution, Civil War--and the Enlightenment.

A tidal wave of enforced intolerance is

sweeping America. Government is pandering to the religious fundamentalist movement, politically bellicose with its program of action to rejuvenate the "moral fiber" of a demoralized and economically declining nation. Simultaneously, in the current social climate in the United States the terrorist ultra-right flourishes as seen in the bombing of abortion clinics and Ku Klux Klan mobilizations and attacks on blacks and Asians. Thus the attacks on the First Amendment and the growing reactionary terrorist threats are reflctions of the tendency towards state bonapartism, part and parcel of the drive towards war.

War has been delared on "secular humanism." The dictionary defines humanism as "a doctrine, set of attitudes, or way of life centered upon human interests or values: as a philosophy which rejects

supernaturalism, regards man as a natural object, and asserts the essential dignity and worth of man and his capacity to achieve self-realization through the use of reason and scientific method." Webster's Third New International Dictionary, p. 1100 (1976). To the fundamentalists and Moral Majority everything from atheism to the United Nations, the writings of Hawthorne and Hemingway, from sex education to the theory of evolution are anathema as examples of secular humanism.

Evolution, the science of man's "descent with modification" is the particular object of the fundamentalist religious attack. The reasons for this lie in the fact that evolutionary theory deprives man of a mythical "special" status in nature, and exposes the lack of scientific basis for the various religious and other justifications for belief in

racial inferiority. The not so hidden agenda of the proponents of teaching creationism in the schools is to enforce the destructive and dangerous dogma of racial inferiority.

To the organizations here filing as amicus curiae, the study of scientific evolution is fundamental to man's quest for a materialist understanding of our world and human society, not the least because it provides material evidence that we are all part of the same human race, definitively destroying the myths of racial superiority.

As Marxists, amicus curiae are profoundly committed to education and knowledge. One of the hallmarks of any struggle for social emancipation is the struggle of the oppressed against the internal, mental stripes left by the master's whip: the fight for knowledge and

for access to the culture hoarded by the privileged classes.

This country used to be notable for the relatively democratic nature of public education--largely a product of the Civil War and struggles by an ethnically diverse working class for social reform. Today there is an all sided assault on public education, of which the current attack, if successful, will render future generations ignorant and prey to the superstitions of our ancestors.

The fundamental principles of the First Amendment--the free speech and press as well as the religion clauses--are intertwined with the progress of mankind. Some thirty years ago, on the occasion of a proposal to appoint a United States ambassador to the Vatican, this point was succinctly made by James P. Cannon, veteran American Trotskyist:

> Under . . . the First Amendment, free thinkers and atheists, heathens and public sinners, who are very numerous in this country, have had a chance to breathe and spread enlightenment without fear of the dungeon and the rack. The First Amendment has been a protecting shield for the Children of Light and has enabled them to make their great contributions to literature, art and science. A breach in this provision of the Constitution, leading to its eventual repeal, would be an unspeakable calamity aiding and strengthening the forces of reaction and obscurantism here and all over the world.

Notebook of an Agitator, "Church and State," pp. 282-283 (Pathfinder Press, 1973)

For the reasons set forth above the Spartacist League and Partisan Defense Committee are compelled to submit this Brief Amicus Curiae.

STATEMENT OF THE CASE

The State of Louisiana's Balanced Treatment Act, La. Rev. Stat. Ann sec. 17:286 (West's 1982) mandates the teaching of creationism under the rubric of "creation-science" whenever evolutionary science is taught. The Act declares that its purpose is "academic freedom" and demands the establishment of state and local boards to develop a curriculum guide and provide college level faculty to assist. Penalties are imposed for any discrimination against a teacher of "creation-science," but not for a teacher of evolutionary-science.

The majority of the Court of Appeals affirmed the district court's judgment that the law is unconstitutional. "Not withstanding the supposed complexities of religion-versus-state issues and the lively debates they generate, this particular case

is a simple one, subject to a simple disposal: the Act violates the establishment clause of the first amendment because the purpose of the statute is to promote a religious belief," (765 F.2d 1251).

Amicus adopts the statement of the case as set forth in Appellees Brief, particularly as it sets forth the legislative history of the Act.

There is a historical context to this issue--and it begins long before the Scopes "Monkey Trial" in Dayton, Tennessee. The battle being fought originated during the Enlightenment. On the ideological plane it was the forces of religious reaction against humanism and the development of science. It was not only the fight of Darwin, but that of Galileo two hundred fifty years earlier. On the political plane it was the monarchy and church united against the democratic republic. In short, the period identified

in materialist historical terms as that of the bourgeois democratic revolution.

The Balanced-Treatment Act is part of a campaign by the Fundamentalist religious right to impose their program on the totality of American society. Having failed at promoting and defending state laws which directly outlaw the teaching of evolution, the proponents of the Louisiana law attempt to justify the teaching of creationism by a definition of it as "science". The essential starting point, however, is the fact that creationism is not science, but religion.

The advocates of the "Balanced-Treatment Act" have tried to buttress their claim with pseudo-scientific affidavits and assertions of the scientific basis for creation. But the description of "creation-science" as "abrupt appearance in complex

form" discloses all. The creationists assert they deny only the fact of "macro-evolution" (evolution of all species from simple one-celled animals, originating in the primordial soup), while affirming that "microevolution" (evolution within a species, type or family) does occur. This pseudo-scientific jargon means that they deny the descent of man from earlier forms of primate life--since the days of Charles Darwin this has been the central aim of the religious opponents of evolution.

Creationists trade on semantic unclarity and wilful ignorance when they argue that scientists refer to evolution as a "theory." The term theory as used by scientists means "a coherent group of general propositions used as principles of explanation for a class of phenomena." Random House Disctionary of the English Language, Random House, p. 1471 (1967)This

is quite the contrary of the popular use of the term theory, eg. "a mere hypothesis, conjecture, or guess." Scientific theories are proved through research and experimentation. Since codified by Charles Darwin in The Origin of Species in 1859, the scientific theory of evolution has been more than amply proven to be a fact. That evolution happened is a fact. The exact process by which it happened continues to be one of the most vital, controversial areas of scientific research.

The scientific ferment surrounding evolutionary theory does not mean that scientists are doubtful about the theory of evolution. Quite the contrary: unlike religion, science accepts nothing as dogma. The ability to test the theory through research and experimentation is what makes a theory scientific rather than mystical or

religious.

The creationists use of controversy among evolutionary scientists to discredit evolutionary theory is dishonest. They attempt to use the works of Harvard biologist and geologist Stephen J. Gould--a vocal activist on behalf of evolution--as "evidence" to support creation. Gould explicitly denounced the creationists' attempt to distort his theory of punctuated equilibria into support for their religion. "Evolution as Fact and Theory," Hen's Teeth and Horse's Toes (W.W. Norton & Company, Inc. 1984). Gould's theory, propounded in collaboration with Niles Eldridge in 1972, argues that evolutionary change occurs in "bursts" of rapid speciation, followed by longer periods of stable existence. This theory has nothing to do with creationism.

In addition to distorting the work of current evolutionary scientists as support

for the "scientific basis" for creationism, the appellants rely in part on "eminent 19th century scientists", Louis Agassiz, Georges Cuvier and Sir Richard Owen. Owen was in fact an evolutionist; Cuvier's creationism "disproved the linchpin of modern fundamentalist creationism: an age of but a few thousand years for the earth." See, Gould, "The Stinkstones of Oeningen," Hen's Teeth and Horse's Toes, p. 104. Agassiz was widely ridiculed in the scientific community for his opposition to Darwin's theory of evolution; Agassiz was also a notorious racist who subscribed to the theory of polygeny (separate creation of human races). When asked by a member of President Lincoln's Inquiry Commission in 1863 for his considered opinion on the role of blacks in American society, Agassiz replied: "they are incapable of living on a footing of social

equality with the whites...." Gould, The Mismeasure of Man, (W.W. Norton & Co., Inc. 1981) p.48.

The Balanced-Treatment Act will inhibit the teaching of evolution, intellectually impoverish future generations of children and rob them of a scientific understanding. Whether or not a creator or some other religious or mystical power had anything to do with the history of life on our planet is a matter for the individual as his own private beliefs and not a matter for the public schools.

LEGAL ARGUMENT

THE LOUISIANA "BALANCED-TREATMENT ACT" MANDATING THE TEACHING OF CREATIONISM IN THE PUBLIC SCHOOLS VIOLATES THE FIRST AMENDMENT OF THE CONSTITUTION IN THAT IT IS IN FURTHERANCE OF RELIGION

The First Amendment is the "keystone of our Government, ... the freedoms it guarantees provide the best insurance against destruction of all freedom," Mr. Justice Black dissent in Dennis v. United States, 341 U.S. 494, 580 (1951).

The First Amendment primarily consecrates the political and legal theory of the Enlightenment, a criticism of general feudal arbitrariness. It and the other texts of the Bill of Rights are "historical texts, and as such constitute a precis or summary of the abuses of feudalism throughout Europe .... [D]irected against feudalism, it was the philosophy of enlightenment in opposition to the philosophy of

obscurantism," Mitchell Franklin, "Infamy and Constitutional Civil Liberties," Lawyers Guild Review, Vol.XIV, No. 1. Spring 1954.

The First Amendment is a unified totality, the "text is indeed both general and absolute. In one sentence it separates church and state and guarantees free opinion." Id. at 5.

It is long established that the First Amendment is unified in its various clauses by the central liberty of freedom of conscience. Cantwell v. Connecticut, 310 U.S. 296 (1940), Wooley v. Maynard, 430 US 705, 714-715 (1977), Widmar v. Vincent, 454 US 263, 269 (1981), Wallace v. Jaffree, 105 S. Ct. 2479, 86 L. Ed2d 29, 39-40 (1985).

The legal force and continued applicability of the First Amendment rests with the fact that the Constitution of the United States is in reality three constitutions, each of which states in legal

formulations the outcome of vital historic changes in American social history. The First Constitution, that of 1787 justified an American separation between national or general power and state or particular power. This was called federalism; and behind the shield of it American slavery existed and developed for several decades until such servitude was destroyed by the Civil War.

Within two years, the First Constitution was subordinated. The second constitution was introduced in 1789 through the Bill of Rights consecrated in the first ten amendments of the Constitution.

After the defeat of slavery on the battlefields of the Civil War, the Third Constitution was initiated. It is grounded on the Reconstruction Amendments, the Thirteenth, Fourteenth and Fifteenth Amendments to the U.S. Constitution. Thus

the third constitution codifies the completion of the U. S. bourgeois democratic revolution creating a democratic, national American State, founded on the hegemony of the first ten amendments and of the Thirteenth, Fourteenth and Fifteenth Amendments, appropriately subordinating the so-called federalism of the First Constitution.

The import of this constitutional history is that the Constitution and particularly the Bill of Rights is a living document, infused with flexibility by the Due Process and Equal Protection Clauses of the Fourteenth Amendment, subordinating the state governments to these democratic principles. See, Gitlow v. New York, 268 U.S. 652, 666 (1925), Cantwell v. Connecticut, supra., Everson v. Board of Education, 330 U.S. 1, 15-16 (1947).

The principle of separation of church

and state was the most radical of these rights. Henry Steele Commager explained:

> We tend to forget that separation of church and state and rejection of religious establishments were, in the 18th century, the most revolutionary experiment on which the new United States embarked. It commanded more attention, applause and censure than the creation of the new nations or the rejection of colonialism. No other Western nation had ever tried so reckless an experiment. (New York Times 16 Sept 1984)

The fundamental concern of the the Religion Clauses of the First Amendment is the relationship between religious expression and the state. The underlying historical perception is that a union between religion and government leads to persecution and civil strife, Everson v. Board of Education, supra. and "tends to destroy government and degrade religion," Engel v. Vitale, 370 U.S. 421, 431 (1962).

In School District of Abington v. Schempp, 374 US 203, 215 (1963) the Court

approvingly quoted Board of Education v. Minor, 23 Ohio St 211, 253 (1872), which stated:

> The great bulk of human affairs and human interests is left by any free government to individual enterprise and individual action. Religion is eminently one of these interests, lying outside the true and legitimate province of government.

Citing Thomas Jefferson, the rigour of this principle has been described as, "intended to erect a 'wall of separation between church and State.' Everson v. Board of Education, supra., at 16. Furthermore, as the Court held in Everson:

> The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.
> 330 U.S., at 15.

The First Amendment "requires the state to be neutral in its relations with groups

of religious believers and non-believers," Id., at 18; School District of Abington v. Schempp, supra., at 216. And, as stated in Wallace v. Jaffree, "when the underlying principle has been examined in the crucible of litigation, the Court has unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all."supra., at 41.

As applied to the American schoolroom, the Court is compelled to protect against violations of the First Amendment, Epperson v. Arkansas, 393 U.S. 97, 104 (1968), including laws respecting a particular religious belief, School District of Abington v. Schempp, supra., at 215. The state's right to prescribe its public school curriculum is limited to the extent that it may not compel or prohibit the teaching of a theory or doctrine for religious reasons.

Epperson, supra., at 107. The vigilent protection of the First Amendment is nowhere more vital than in American public education. Id. at 104.

Mr. Justice Brennan, concurring in School District of Abington v. Schempp, supra., at 230 stated: "Americans regard the public schools as a most vital civic institution for the preservation of a democratic system of government. It is therefore understandable that the constitutional prohibitions encounter their severest test when they are sought to be applied in the school classroom."

The instant law, mandating the teaching of creationism in the Louisianna public schools, cannot survive constitutional scrutiny. The standard applied in testing the violation of the Establishment Clause was set in Lemon v. Kurtzman, 403 U.S. 602,

612-613 (1971): (1) whether the statute has a secular legislative purpose; (2) whether the principal or primary effect of the statute advances or inhibits religion; and (3) whether the statute fosters an excessive entanglement with religion.

With the recognition that creationism is a religious belief and cognizance of the weighty social history surrounding the battle between science and religion--the Enlightenment and obscurantism--it is indisputable that the Louisianna Act is in furtherance of religion and serves no secular purpose.

CONCLUSION

For all the reasons set forth above, the decision of the Court of Appeals for the Fifth Circuit should be upheld.

Dated: New York, New York
August 18, 1986

Respectfully submitted,

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